

STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Lexington Antioch, LLC)
Map174-00-0, Parcel 200.00) Davidson County
Commercial Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$3,056,400	\$17,143,600	\$20,200,000	\$8,080,000

An Appeal has been filed on behalf of the property owner with the State Board of Equalization on September 1, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on April 19, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Attorney Bob Pernai, the taxpayer's representative and Mr. Dennis Donovan, MAI, Division of Assessments for the Metro. Property Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a commercial tract (warehouse) commonly known as Lexington Antioch located at 6050 Dana Way in Nashville, Tennessee.

The taxpayer's representative contends that this industrial warehouse formerly known as Dana Corporation Facility is worth \$14,440,000 based on his analysis of the data using the income approach. Mr. Pernai produced a multi-paged exhibit that included not only the income analysis, and the 1st Quarter 2006 Industrial Market Report as well as the proposed lease for the new tenant. Mr. Pernai relied solely on the income approach to value when arriving at his conclusions for 'market value'. His rationale remains that investors when looking at how much to pay or not pay for income producing property will be looking at the proverbial bottom line, how much income does this property produce on a yearly basis?

The assessor contends that the property should be valued at \$18,225,600. In support of this position Mr. Donovan used the three standard customary approaches to value, (1) sales comparison approach, (2) cost approach and (3) the income capitalization approach.

The germane issue is the fair market value of the property as of January 1, 2006. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that “[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values”

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition **of market value for ad valorem tax purposes** is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 2 1-22. (emphasis supplied) *Gap Inc., (Sumner Co., Tax Year 2006)*, page 2.

After reviewing all the evidence in this case, the administrative judge finds that the subject property should be valued as assessed at \$18,225,599¹. Since the taxpayer is appealing from a determination by the Davidson County Board of Equalization the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981) and Rule 0600-1-.11(1) State Board of Equalization.

“ . . . the threshold issue is this appeal concerns the minimum evidence the appealing party must introduce to establish a *prima facie* case”. *Biveks Corp, et al*, (Madison Co., Tax Year 2005).

In reviewing and analyzing the facts presented by Mr. Pernai in this case similar conclusions can be with other case decisions by Senior Administrative Judge Mark Minsky. Mr. Pernai states that since occupancy of the warehouse has a direct bearing on its income producing capability the lease value should apply, it should be noted that the county did give a reduction of the value by the Metropolitan County Board of Equalization by deducting the loss rent, the fee simple interest is what is to be valued for taxation

¹ The amount set by the County Board minus the agreed upon lost revenue from the vacancy in the warehouse.

purposes. *First American National Bank Building Partnership* (Davidson County, Assessment Appeals Commission, Tax Years 1984-1987)

Mr. Donovan ultimately relied on the income approach in reaching his value but he also, unlike Mr. Pernai, considered the other approaches as well. As has been discussed, to have a proper analysis the other approaches must at least be considered. Biveks Corp, et al, (Madison Co., Tax Year 2005).

Mr. Pernai again used information unique to the subject property without a proper adjusted and stabilized industry data in making his decisions.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$3,056,400	\$17,143,600	\$20,200,000	\$8,080,000

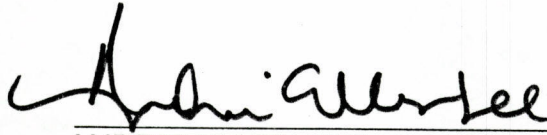
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 18th day of May, 2007.

A handwritten signature in black ink, appearing to read "Andrei Ellen Lee", written over a horizontal line.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Bob Pernai, Esq.
Jo Ann North, Property Assessor